

Minutes of the 17th Meeting of the Co-ordination and Monitoring Committee (CMC) on Vanishing Companies held on 29.05.2006 at 3:00 P.M. in the Chamber of Secretary, Ministry of Company Affairs, Shastri Bhawan, New Delhi.

The 17th Meeting of the Co-ordination and Monitoring Committee (CMC) on Vanishing Companies was held on 29.05.2006 at 3.00 P.M. in the Chamber of Secretary, Ministry of Company Affairs, Shastri Bhawan, New Delhi. The list of officers who attended the meeting is given at **Annexure I**. Chairman, SEBI could not attend the meeting.

Secretary, MCA welcomed the participants to the meeting of the CMC. Agenda items were taken up for discussion and decisions taken are as follows.

17.1 Confirmation of the minutes of the 16th Meeting held on 05.01.2006:

1. Minutes of the 16th meeting of Co-ordination and Monitoring Committee (CMC) on Vanishing Companies held on 05.01.2006 at 11.00 A.M. were confirmed.

17.2 Review of Action Taken :

Follow-up action was reviewed item-wise. The details are given hereunder:

2. As regards action taken on the decisions taken in the last meeting held on 05.01.2006, regarding obtaining declaration from a Merchant Banker (MB) in the offer document to the effect that all the disclosures made in the offer document are in conformity with the filings made in the ROC office by the company, SEBI representative requested for a reference from the Ministry, so that the changes in DIP guidelines requiring a declaration from MBs may be made. It was clarified by JS (K) that once a decision has been taken by CMC, no further reference is required. However, if any clarification or information is required on the specific issue, the same may be taken. It was further clarified that this issue had arisen as a result of some discrepancies in the disclosures

made by the companies in the offer documents were noticed during the course of investigation carried out by SFIO as compared to the filing of documents in the RoC offices. It was therefore decided that SEBI may proceed further on the decision taken by CMC on the matter and may seek clarifications from MCA, if required.

2.1 Regarding para 2.4 of the minutes of CMC meeting held on 5/1/2006, SEBI representative informed that there was no mention of finalization of format of verification report, in ATR. It was decided that Task Forces may be advised to give their comments to Small Group for their consideration.

2.2 Regarding the progress in the case of M/s. Sparkle Foods Limited, Secretary, MCA asked RD (WR) to give a self contained statement of the case so as to workout an effective legal remedy so that the interests of the investors do not suffer adversely. If need be the matter will be taken up with the Law Ministry so as to ensure that the Court order passed initially wherein one of the promoters was asked to deposit a sum of Rs.2 crores is implemented to protect the interests of the investors.

17.3 Review of the Working of Task Forces:

3. Regarding functioning of the Respective Task Forces, the Regional Directors were asked to give a brief account of the functioning of Task Forces for their Regions. RD(WR) stated that Regional Task Forces meetings are held once in two months. The representatives from the Investor Associations from Gujarat and Maharashtra are also invited for the meetings. The Nodal Officers appointed by the State Governments normally do not attend such meetings. RD(NR) also stated that normally the Nodal Officer from the State Government do not attend the Regional Task Force meetings. Secretary, MCA stated that the functioning of Task Forces need to be more outcome based with a clear focus on the activities to be undertaken by the respective Task Forces. For this purpose some norms need to be fixed with regard to the time frame for

initiating action, responsibility level to be fixed up and a periodic review mechanism be evolved so as to ensure timely action. He stated that the steps need to be taken up by each task force.

3.1 JS (M) Stated that Standing Committee of Parliament has also expressed concern over the lack of effective mechanism where by the investors are provided their money back. He explained in brief the details of action which have already been taken under the provisions of Companies Act as well as under the Indian Penal Code and also the fact that disgorgement proceedings were launched in two selected cases on a test check basis.

3.2 JS (M) stated that the Standing Committee of Parliament had also expressed concern that the promoters of Vanishing Companies are again approaching the capital market for raising funds from the capital market.

3.3 The representative of SEBI explained that orders passed under section 11B of SEBI Act against "vanishing companies or their promoters/ directors" barred them for a period of five years from the date of the order. When asked as to whether a company or directors for whom debarring period is over, can come and raise money through public issues, she informed that SEBI has however not come across any such case where debarring period for director or company is over and the company has filed a draft offer document with SEBI. As and when such case comes, the same would be examined by SEBI from all angles including legal angle. She also stated that SEBI has taken certain policy initiatives to ensure that companies accessing securities market do not become "vanishing companies" in future, which include the following:

1. **Strengthening of eligibility norms** which inter-alia require issuer companies to satisfy requirements of Net Tangible Assets, Track record of distributable profits, Net worth etc. Further in case they are not able to satisfy these norms, they can only come if there is sufficient institutional participation i.e either the project should be appraised and

participated by Banks or FIIs or the issue should be through Book Building route where at least 50% shall necessarily come through Qualified institutional Buyers.

2. **Strengthening of disclosures pertaining to promoters** : SEBI has mandated disclosures of complete profile of the promoters including their age, educational qualifications, experience in the business or employment and in the line of business proposed in the offer document, their business and financial activities, photograph, Voter ID Number, Driving License Number etc. Further, the Permanent Account Number, Bank Account Number and Passport Number of the promoters have to be submitted to the Stock Exchanges on which securities are proposed to be listed, at the time of filing the draft offer document to them.

3. **Strengthening of corporate governance for monitoring of utilization of issue proceeds-** SEBI has introduced clause 49 in the listing agreement, which requires any listed company to disclose to the Audit Committee, the uses / applications of funds raised through public/ rights or preferential basis, on a quarterly basis as a part of their quarterly declaration of financial results. Further, on an annual basis, the company shall prepare a statement of funds utilized for purposes other than those stated in the offer document/prospectus/notice and place it before the audit committee. Such disclosure is required to be made till such time that the full money raised through the issue has been fully spent. This statement shall be certified by the statutory auditors of the company. The audit committee is required to make appropriate recommendations to the Board to take up steps in this matter.

3.4 JS(K) stated that whether disclosure norms include the following checks:-

- ❖ Whether the company had accessed capital market earlier under the same name or any other name?; and
- ❖ Whether the promoters / directors of the company have been involved earlier in any IPOs of the company or not.

DII (G) enquired whether there is disclosure required in the prospectus regarding the issue of any of the directors of the company has been debarred at any point of time by SEBI. Member, SEBI clarified that the present criteria does include disclosure to this effect in the prospectus. Whether SEBI has earlier prohibited the company / director or not and the facts are verified from the data base of the directors which is available in-house with SEBI. But no such linkage is available with other external agencies.

3.5 Secretary, MCA enquired whether there is any linkage with the data base of directors who have been charged of having committed any economic crime, e.g. cheating, forgery or any other criminal offences. He stressed the need for developing a sound, viable and full proof linkage with the data base of National Crime Records Bureau, FCRA, Immigration Authorities and other Economic Agencies. It was decided to set up a Working Group consisting of DII (BMA), MCA- as Convener; RD (WR); Ms. Neelam Bhardwaj, DGM, SEBI and Mr. Amerjeet Singh, Regional Manager, SEBI, Delhi, to explore the terms of reference for creating a system of developing linkages with the data base of other economic agencies. It was stated that by 2nd June, 2006 a charter of Working Group would be discussed by Mr. Amerjeet Singh and DII (BMA). The full Working Group will meet on 8th June, 2006 at New Delhi to discuss the terms of reference in this regard.

3.6 Secretary, MCA stated that there is a need for MCA-21 sensitisation in SEBI and the use/linkage of this data with SEBI. He stated that a brief note on MCA-21 may be prepared for Chairman, SEBI so as to share the advantages of data base available with the Ministry. JS (M) stated that recently Ministry

had issued instructions in pursuance to the directions given by the Hon'ble Minister for Company Affairs that 100% of the cases may be taken up for technical scrutiny by the ROCs in case of companies coming out with IPOs of Rs.50 crores or more in the immediately following year so as to keep a check on their fund utilization and give an early warning signal for the potential Vanishing Companies.

17.4 Review of Action taken under various provisions of the Companies Act, 1956:

4. Secretary, MCA, while reviewing action taken report under various provisions of the Companies Act, 1956, observed that the companies which have been kept on the watch list but were found not traceable at the time of inspection conducted by the field officers, is a serious issue which needs introspection by the Task Forces regarding efficacy of their working. JS(K) explained that it was a conscious decision to keep the companies in the watch list after being taken off from the list of Vanishing Companies so as to keep a check on their activities. For this purpose only, the inspections under section 209 (A) of the Companies Act were also ordered. However, the fact that some of these companies were not found at their addresses given does not necessarily lead to the conclusion that these companies have vanished. The ROCs concerned may be asked to take necessary action under the provisions of Companies Act, filing of prosecutions against such companies and also action under section 209 A (8) of the Companies Act may also be taken. Further RDs should personally monitor and take up these cases in the next meeting of Regional Task Forces so as to ascertain the compliance position of such companies from SEBI and Stock Exchange Authorities. Member SEBI also agreed that this would help in identifying whether companies have actually vanished or not. It was decided that based on the expertise gathered, the criteria set up for identifying a vanishing company may be revisited, if required.

17.5 Review of FIRs filed / registered under IPC:

5. Secretary, MCA suggested that following steps may be taken by the RDs so as to make the working of Task Forces more effective -

- State-wise analysis of the cases may be done;
- Stage-wise status of individual cases may be evaluated periodically.
- State Governments may be requested to handover investigation of such cases to the Economic Offence Wing of the Concerned State Government, wherever this was not the case.
- The feasibility of providing training to the Investigating Officers may also be examined by the Task Forces.

5.1 The Task Forces may lay down the norms for disposal of these cases based on the number of cases which are pending in a particular State. Accordingly, a coordination mechanism with the State Government for appointment of Nodal Officer may be evolved. JS(M) stated that Task Forces should ensure that appropriate actions are taken by the Nodal Officers of the State to examine that investigations were completed, challans filed in the Court and prosecution proceedings under IPC were launched against the delinquent promoters / directors. Mere registration of FIRs did not mean that the job was over. Further, the Task Forces should provide the copies of complaints received from investors to the State Authorities so that effective precaution could take place.

17.6 Disgorgement Proceedings:

6. The factual position and progress with regard to disgorgement proceedings in respect of the two selected cases was reviewed by the Committee.

17.7 Identification of Vanishing Companies in respect of the IPOs during the period 1998-2001:

7. Director (PK) stated that all the Regional Task Forces need to examine the three lists of companies which came out with IPOs so as to clearly identify the Vanishing Companies, if any, and submit their recommendations to the Group Committee at the earliest.

17.8 Observations of Standing Committee on Finance:

8. Regarding the observations made by then Parliamentary Standing Committee on Finance on the issue of initiating action against Merchant Bankers, it was stated by the Member, SEBI that SEBI has already informed the standing committee that as regards initiating actions against Merchant bankers which had handled IPOs of "vanishing companies" SEBI will take actions in terms of the provisions of SEBI Act and SEBI (MB) Regulations, notwithstanding the practical problems explained, to standing committee. Further, it was also informed by SEBI representatives that while granting registration to an entity as a Merchant Banker, SEBI applies the test of Fit and proper. Only those merchant bankers which have been registered by SEBI in terms of SEBI (MB) regulations are eligible to manage an issue. Regarding the observation of the Standing Committee on the Role of RBI, it was stated that RBI has no role in the coordination mechanism.

17.9 Consideration of a reference from SEBI regarding public issue of M/s. Tanla Solutions Ltd. (formerly known as M/s. Prism Foods Ltd., a vanishing company under watch list):

9. RD(SR) stated that all along an exit route had been available to the shareholders since shares were listed on the Stock Exchange. Member, SEBI stated that SEBI has no objection from their side as the new management has no link with the previous management which was identified with the act of vanishing. JS(K) stated that the new company may be asked to give a general advertisement for the shareholders of the old company informing them about

the change in the name of the company and also for surrender of their old share certificates in exchange for new share certificates. JS(K) also suggested that the company may be asked to give complete disclosure about the past history to the shareholders at the time of public issue. The Committee noted the following with regard to the case:

- Company has undergone a total change with new management, new object, new activity and new name.
- New promoters offered exit to shareholders when they took over the company.
- Under new promoters, company has shown an improved performance.
- Shares of the company are listed and are being traded in stock exchanges thereby providing exit to existing shareholders.

The Committee was of the view that such kind of cases where shareholders of the "vanishing companies" are getting exit opportunity by way of open offer in terms of takeover Regulations or subsequently through secondary market route, need to be encouraged from shareholders' perspective.

Thus Committee prima facie agreed that company may be allowed to raise funds from public subject to the following:

- SEBI's suggesting any conditions/ precautions considered necessary based on legal advice.
- SEBI submitting a factual report on steps taken by it, to take care of concerns expressed by the members, within 15 days from the date of CMC meeting.

17.10 Consideration of the Report received from one of the Investors' Associations:

10. With regard to the consideration of the report received from one of the investors' Associations, the Regional Task Forces were asked to examine the issues raised after verifying the fact whether any of the companies kept in the watch list has actually vanished or not. It was decided that since the representatives of SEBI and Stock Exchange are present in the meetings of the Task Forces, it would be better to examine the facts at initial level itself first. Based on the findings, the systemic deficiencies, if any, would be taken care of by way of remedial action.

17.11 It was decided that the next meeting of the CMC may be held on 19th July, 2006.

Annexure I

List of officers who attended the 17th meeting of the Coordination & Monitoring Committee (CMC) on Vanishing Companies held on 29.05.2006 at 3.00 P.M. in the Chamber of Secretary, Ministry of Company Affairs (MCA), New Delhi.

Ministry of Company Affairs

1. Shri Anurag Goel, Secretary
2. Shri Jitesh Khosla, Joint Secretary
3. Shri Y. S. Malik, Joint Secretary
4. Shri V.S. Rao, RD, Western Region
5. Shri R. Vasudevan, RD, Southern Region
6. Shri Rakesh Chandra, RD, Northern Region
7. Shri U.C. Nahta, RD, Eastern Region
8. Shri Pawan K Kumar, Director
9. Shri L. M. Gupta, DII
10. Shri B.M. Anand, DII
11. Shri Alok Samantarai, JD (L)
12. Shri Diwan Chand JD (I)
13. Shri E. Selveraj, JD (L)

SEBI

1. Dr. T. C. Nair, Whole Time Member, SEBI
2. Ms. Neelam Bhardwaj, Dy. General Manager
3. Ms. Raj Rani Bhalla, Dy. Legal Adviser
4. Shri Amarjeet Singh, Regional Manager, NRO, SEBI.
